

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:

CORE SCIENTIFIC, INC. . . HOUSTON, TEXAS
DEBTOR. . . MONDAY, MARCH 20, 2023
. . . 01:11 P.M. TO 01:43 P.M.
.

MOTION HEARING

(SOME PARTIES APPEARING TELEPHONICALLY)

BEFORE THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

ELECTRONIC RECORDING OPERATOR: BRANDIS ISOM

CASE MANAGER: ALBERT ALONZO

TRANSCRIPTION SERVICE BY:

TRINITY TRANSCRIPTION SERVICES
1081 Main Street
Surgoinsville, TN 37873
281-782-0802
trinitytranscripts@aol.com

Proceedings recorded by electronic sound recording;
Transcript produced by transcription service.

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

IN RE: . CASE NO. 22-BK-90341
CORE SCIENTIFIC, INC. . HOUSTON, TEXAS
DEBTOR. . MONDAY, MARCH 20, 2023
DEBTOR. . 01:11 P.M. TO 01:43 P.M.
.

• • • • •

MOTION HEARING

(SOME PARTIES APPEARING TELEPHONICALLY)

BEFORE THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

For DEBTORS: **ALFRED R. PEREZ, ESQ.**
CHRISTINE CALABRESE, ESQ.
Weil Gotshal et al
700 Louisiana, Suite 1700
Houston, TX 77002

Declarant for the Debtor: **MICHAEL BROS**

For AD HOC GROUP OF SECURED
CONVERTIBLE NOTEHOLDERS: **KRIS HANSEN, ESQ.**
Paul Hastings LLP
600 Travis Street, 58th Floor
Houston, TC 77002

For PRIORITY POWER MANAGEMENT, LLC: **SCOTT BOWLING, ESQ.**
DANNY DAVID, ESQ.
Baker Botts L.L.P.
2001 Ross Avenue, Suite 900
Dallas, TX 75201

Transcriber: Cheryl Battaglia
Trinity Transcription Services
1081 Main Street
Surgoinsville, TN 37873
281-782-0802

1 Houston, Texas; Monday, March 20, 2023; 01:11 p.m.

2 **(All Parties Appearing Telephonically)**

3 **THE COURT:** Good afternoon, everyone. This is Judge
4 Jones. The time is 1:12 Central. Today is March the 20th,
5 2023. This is the docket for Houston, Texas.

6 Next on the 1 o'clock docket we have the jointly
7 administered cases under *Case Number 22-90341, Core Scientific,*
8 *Inc.* Folks, please don't forget to record your electronic
9 appearance. That's a quick trip to the website. Couple of
10 mouse clicks. You can do that at any time prior to the
11 conclusion of the hearing.

12 First time that you speak, if you would please state
13 your name and who you represent. That really does give the
14 court reporters a good point of reference to do what is now a
15 very difficult job. We are recording this afternoon using
16 Court Speak. We'll have the audio up on the docket shortly
17 after the conclusion of the hearing this afternoon.

18 For folks in the courtroom, if you would make sure
19 you speak from the lectern, since that's the only place we have
20 a camera. That way you can both be seen and be heard.

21 All right. Mr. Perez? Good afternoon.

22 **MR. PEREZ:** Good afternoon, your Honor. Alfredo
23 Perez on behalf of the Debtors. Your Honor with me and who
24 will be presenting the motion is Miss Christine Calabrese.

25 And, your Honor, I think I'm happy to report that, as

1 a result of the good work done by all of the other people at
2 the firm, not me, that we were able to come to a form of order
3 that we have agreed -- that is agreed among the parties. And
4 that is filed at Docket 702. And it has two redlines, one from
5 what we filed originally about a week ago, and then an -- and
6 then one from what we filed last night.

7 **THE COURT:** Right.

8 **MR. PEREZ:** It think with that, your Honor,
9 and -- and -- and the goal of the language that was put in
10 there, I don't think anybody actually is complaining about the
11 deal. The goal is to make sure we preserve everyone's rights.
12 And that's just been further refined.

13 One other thing, your Honor. We are working on
14 a -- on a more detailed schedule of the actual equipment going
15 back. And that's just going to take a little bit of time. But
16 we will file that schedule with the Court at the appropriate
17 time. It doesn't hold up anything. But just so if anybody
18 wants to go back and look at it -- it eventually --

19 **THE COURT:** That -- and -- and so that'll actually
20 delineate the equipment which has been delivered and is on
21 site, versus equipment that hasn't been delivered.

22 I -- cause I understand that makes a huge difference.

23 **MR. PEREZ:** And -- and we have an idea. And most of
24 it is that one picture that we showed you --

25 **THE COURT:** Okay.

1 **MR. PEREZ:** -- of -- of the transformer.

2 That's -- that's most of, you know, that's the biggest single
3 component.

4 But -- but we're just going to do that just so
5 there's no confusion. It's not -- it's -- we don't want
6 to -- we don't want to hold up anything. But it's just -- just
7 for good form.

8 **THE COURT:** No. I got it. And I looked at the
9 redline to the last redline. I -- the approach just makes
10 sense to me.

11 I -- I agree with you. I think everybody understands
12 it's a good deal all the way around. And just everyone wants
13 to make sure that they aren't the one that's paying for it.
14 I -- I totally got that. All right.

15 **MR. PEREZ:** Thank you, your Honor.

16 **THE COURT:** All right. Miss Calabrese?

17 (**Pause in the proceeding.**)

18 **MS CALABRESE:** Thank you.

19 **THE COURT:** Thank you. No pressure. But I want your
20 A plus game today.

21 **MS CALABRESE:** All right. I will bring my A plus
22 game.

23 All right. So thank you very much, your Honor. We
24 have Michael Bros here. He's joining remotely. He's a
25 declarant for the Debtors on the 9019 factors. His declaration

1 is docketed at 699-9. And I'd like to move that declaration
2 into evidence if that so pleases the Court.

3 **THE COURT:** All right. Thank you.

4 Any objection not the admission of Mr. Bros'
5 declaration found pursuant to the protocol at Docket Number
6 699-9?

7 **(No response.)**

8 **THE COURT:** All right. And it's admitted.

9 **(Debtor's Exhibit Number 699-9 was received into**
10 **evidence.)**

11 **THE COURT:** Anyone wish to cross examination
12 Mr. Bros?

13 **(No response.)**

14 **THE COURT:** You sure you don't want to take a shot.

15 **(Laughter.)**

16 **THE COURT:** All right. Then Mr. Bros I excused as a
17 witness.

18 Thank you. And I've read the declaration.

19 **MS CALABRESE:** Thank you, your Honor.

20 We've also prepared a presentation for the Court.
21 It's brief. And the purpose is to set the stage from a factual
22 perspective and also walk the Court through some of the key
23 terms from the settlement and the bases for approval.

24 **THE COURT:** All right.

25 **MS. CALABRESE:** The presentation is docketed at 699-

1 10. I'd also like to move that demonstrative into evidence.

2 **THE COURT:** All right. Thank you.

3 Any objection for purposes of today only?

4 **(No response.)**

5 **THE COURT:** All right. Then it's admitted as a
6 demonstrative.

7 **(Debtors Demonstrative Exhibit Number 699-10 was received
8 into evidence.)**

9 **THE COURT:** Are you going to walk me through it?

10 **MS CALABRESE:** Yes.

11 So if you could give control to my colleague, Austin
12 Crabtree.

13 **(Pause in the proceeding.)**

14 **THE COURT:** He has control.

15 **MS CALABRESE:** Thank you, your Honor.

16 So if you could please pull up first page of the
17 document.

18 **(Pause in the proceeding.)**

19 **MS CALABRESE:** Let's give him a minute.

20 Mr. Crabtree's also bringing his A plus game today --

21 **THE COURT:** You got it.

22 **MS CALABRESE:** -- on -- on the controls.

23 **MR. PEREZ:** I think he's related to Mr. Carlson.

24 **(Laughter.)**

25 **MS CALABRESE:** Okay. Austin, next slide, please.

1 Okay. So like I said, your Honor. This is really
2 for purposes of table setting. The two data center facilities
3 that are relevant here are the Cedarville and the Cottonwood
4 data center facilities. We'll go through those briefly. Talk
5 through the Debtor's relationship with PPM, disputes between
6 the Debtors and Priority Power, walk through the key terms of
7 the settlement, and then the bases for approval.

8 Okay. Next slide, Austin.

9 So the Cottonwood and Cedarville facilities are in
10 west Texas. This was Core's entry into the west Texas space.
11 You can see the Cottonwood facility on the map. It's in
12 Barstowe (phonetic) and Cedarville is in Pecos, which I, you
13 know, googled. And it looks like they're 26 miles apart. So
14 pretty -- pretty nearby.

15 Next slide, please, Austin.

16 Okay. So this is the Cottonwood data center
17 facility. You can see that it's mostly a large -- large part
18 of land that's partially constructed. So there are
19 some -- there's some infrastructure on that site. And
20 construction has halted.

21 And as you, I'm sure, know from our motion, the
22 reason construction halted is that Core was anticipating a
23 larger amount of energy across the Cottonwood and Cedarville
24 facilities. When Core realized those facilities would not
25 energize up to that amount, Core halted construction on the

1 facilities.

2 So Cottonwood is partially constructed. And if we
3 look at the next slide, you'll see that Cedarville is a
4 similarly partially constructed facility that would be hosting
5 miners.

6 Currently the Cedarville facility is not operational.
7 It was anticipated to energize up to 720 megawatts. But Core
8 is not currently operating that facility.

9 The Cottonwood facility is partially operational, but
10 significantly under-energized. The Debtors were anticipating
11 300 megawatts for that facility.

12 **THE COURT:** Okay.

13 **MS CALABRESE:** Okay. Next slide, please.

14 So in 2021, Core decided to enter the west Texas
15 space and wanted to build data center facilities in west Texas.
16 And that's when Core contracted with PPM. Priority Power is an
17 energy management services procurement and infrastructure
18 development firm. So here's we'll talk through a little bit
19 how -- what that means for the Debtors, that provides third-
20 parties like Core with consulting and energy procurement
21 services.

22 So here there are four agreements that are relevant
23 to the settlement; two executed and two agreements that were
24 unexecuted pre-petition. But Priority Power has been -- has
25 been operating under it in any event.

1 So the first, your Honor, all of these agreements
2 have very similar names. So we've given them some user-
3 friendly nicknames that I'm going to use for this presentation.
4 So the first agreement that was executed was the power
5 procurement agreement. It was executed in June of 2021.

6 And under that agreement, Priority Power provides a
7 host of different consulting and power procurement services for
8 Core. The most relevant of which, is negotiating Core's
9 electricity supply agreement with its retail electric provider.

10 Here Core's retail electric provider, or REP
11 (phonetic) with Shell. So Priority Power, under this power
12 procurement agreement, has the exclusive right to negotiate
13 Core's REP agreement with Shell or any other REP.

14 Under this agreement, Priority Power is paid a
15 monthly fee based on kilowatt consumption.

16 **THE COURT:** Okay.

17 **MS CALABRESE:** The next relevant agreement was
18 executed in August of 2021. We call it the construction
19 agreement.

20 Under this agreement, Priority Power agreed to build
21 out the electrical infrastructure at the Cedarville and
22 Cottonwood sites. And under this agreement, Priority Power was
23 paid actual costs plus a certain percentage on top.

24 **(Pause in the proceeding.)**

25 **MS CALABRESE:** There are also two draft agreements

1 between Core and Priority Power that were in draft form as of
2 August, 2021, but were never executed. Priority Power has
3 anyway been performing under them. And the services under
4 these agreements are very help for -- for the Debtors.

5 **THE COURT:** Okay.

6 **MS. CALABRESE:** The first agreement is an asset
7 management agreement. So as I understand it, sometimes at the
8 facilities, like a fuse will blow, or they'll be some sort of
9 maintenance that's required. And Priority Power will perform
10 that maintenance, which is very helpful to Core because there's
11 not a lot of providers in the west Texas space. And Priority
12 Power is familiar with the facilities as the company that
13 engineered them and built them out.

14 The other is a curtailment agreement. This one's a
15 bit more complicated to explain. But there's basically a day
16 ahead energy trading program. And Priority Power, as Core's
17 qualified scheduling entity or QSE (phonetic), participates in
18 that program. So if Core, for example, decides -- or the
19 Debtors decide to curtail or not use energy during a high use
20 period --

21 **THE COURT:** Yeah.

22 **MS. CALABRESE:** -- they'll get revenue back. So it
23 incentivizes the reduction of using energy during really high
24 usage times.

25 So the revenue that's generated through that program,

1 of that revenue that's generated, Priority Power retains a
2 certain percentage and passes the remainder along to Core.

3 **(Pause in the proceeding.)**

4 **MS CALABRESE:** So far Priority Power has been
5 performing under that agreement but has retained 514,000 or so
6 approximately of revenue that was generated under that program.

7 **THE COURT:** And that -- that's Core's share?

8 **MS CALABRESE:** That is -- Core's position is that
9 that's Core's share and that Priority Power should have passed
10 it along to Core.

11 **THE COURT:** Got it.

12 **MS CALABRESE:** In the motion we call that the
13 retained DR (phonetic) revenue.

14 Next slide, please, Austin.

15 Okay. So I've already teed this up. But there are
16 really two primary disputes between the Debtors and Priority
17 Power. On the one hand, Core says that we have potential
18 claims and causes of action against Priority Power arising from
19 the anticipated amount of energy the Debtors were anticipating
20 at the Cedarville and Cottonwood facilities. We have potential
21 claims and causes of action that we could pursue.

22 On the other hand, Priority Power has two
23 primary -- primary points. The first is that they are entitled
24 to the retained DR revenues, that 514,000 under the curtailment
25 agreement. And the other are certain mechanics liens relating

1 to the work performed at the Cedarville and Cottonwood
2 facilities, goods, labor, materials. So they have an asserted
3 lien for approximately 20.8 million. That's the landscape of
4 the dispute.

5 Austin, next slide, please?

6 **(Pause in the proceeding.)**

7 **MS CALABRESE:** Okay. So it's against the backdrop
8 that Core -- that the Debtors and PPM started negotiating and
9 ultimately executed a global settlement agreement before your
10 Honor today.

11 This agreement would resolve all issues, both between
12 the Debtors and Priority Power. So it's structured as a walk
13 away to restructure a positive go-forward relationship between
14 the Debtors and Priority Power.

15 **(Pause in the proceeding.)**

16 **MS CALABRESE:** So the principle terms of the PPM
17 settlement.

18 The first is that Priority Power would have a single
19 allowed claim for the approximately 20.8 million. And that
20 would be deemed paid in full.

21 **THE COURT:** And so when it's a single allowed claim,
22 what type of claim?

23 **(Pause in the proceeding.)**

24 **MS CALABRESE:** It would be a complete claim that
25 would be extinguished by the transfer of assets to the party.

1 And my --

2 **THE COURT:** Okay. We're going to work our way
3 through this. So --

4 **MS CALABRESE:** Okay.

5 **THE COURT:** -- what -- what kind of claims are there?

6 **MS CALABRESE:** There are secured claims.

7 **THE COURT:** Right. And they're asserting an M and M
8 lien claim, aren't they?

9 **MS CALABRESE:** Yeah. So that would be a secured
10 claim.

11 **THE COURT:** A secured claim. Okay. Got it.

12 So they're going to get a -- they're going to get an
13 allowed secured claim for 20.8 million, which is going to be
14 deemed paid in full by the transfer of all the Debtor's
15 interest in the equipment back, whatever that is.

16 **MS CALABRESE:** Yes.

17 **THE COURT:** Okay.

18 **MS CALABRESE:** Any -- the Debtor's interest, to the
19 extent they have any, in the equipment as listed in
20 (indiscernible).

21 **THE COURT:** Got it.

22 **MS CALABRESE:** And that would be free and clear.

23 **(Pause in the proceeding.)**

24 **THE COURT:** And how are you going to meet 363(f)
25 requirement?

1 **MS CALABRESE:** So, your Honor, first my understanding
2 is that because of the proposed order that we submitted today
3 that Mr. Perez mentioned at the outset, my understanding is
4 that we actually don't have any -- that we -- that we do have
5 the consent we need to move forward with -- with this deal.

6 **THE COURT:** Cause that's one of the requirements.

7 **MS CALABRESE:** Yes.

8 **THE COURT:** Or one of the options, right?

9 **MS CALABRESE:** So, our -- our best option for meeting
10 363(f) would be consent. And I believe we have it.

11 **THE COURT:** Always. What was going to be your Plan
12 B?

13 **MS CALABRESE:** Plan B would be 363(f)(3), your Honor.

14 So, that would be a little bit of a trickier
15 question. But we could discuss in more detail the value of the
16 assets and whether we could satisfy 363(f)(3).

17 **THE COURT:** Did you have a Plan C?

18 **MS CALABRESE:** Mr. Perez might have a Plan C, your
19 Honor.

20 (**Laughter.**)

21 **MS CALABRESE:** But I just have Plan A and B.

22 **THE COURT:** That's a nice pivot. All right. Go
23 ahead.

24 (**Pause in the proceeding.**)

25 **MS CALABRESE:** Okay. So in addition to that transfer

1 and extinguishing of the 20.8 million, the Debtors would assume
2 the power procurement agreement with some terms amended.

3 **THE COURT:** And the parties have agreed to the
4 language?

5 **MS CALABRESE:** Yes.

6 **THE COURT:** Okay.

7 **MS CALABRESE:** The parties have agreed to the
8 language on the amendment. The most important of which is that
9 the Debtors will have the optionality to negotiate a tolling
10 REP agreement.

11 **THE COURT:** Okay.

12 **MS CALABRESE:** We would also enter into those two
13 other agreements I mentioned, the asset management and
14 curtailment agreements. So those would be executed. The
15 purpose there is just to really give some clarity and execute
16 agreement that Priority Power has been performing under a PPM.

17 **THE COURT:** Yeah. And so you're going to let them
18 keep what's been generated to date. And then going forward,
19 there's -- the split will then occur per the terms of the
20 agreement?

21 **MS CALABRESE:** That's right, your Honor.

22 So they can keep the retained DR revenue. Obviously,
23 we reserve all -- all arguments that we were entitled to in the
24 first place. But as part of the settlement, Priority Power
25 keeps the 514,000 and will also pay an additional 85,000 for

1 their legal and out-of-pocket expenses.

2 **THE COURT:** Okay.

3 **MS CALABRESE:** Okay. And then there's some other
4 terms.

5 The Debtors would agree to introduce Priority Power
6 to any acquirer of the facility. That Priority Power has the
7 option to potentially work with that acquirer moving forward. And a
8 mutual release of all claims and potential causes of action.

9 **THE COURT:** Okay.

10 (**Pause in the proceeding.**)

11 **MS CALABRESE:** Okay. So the equipment that's listed
12 on Annex A, that the Debtors will be transferring to Priority
13 Power, really splits up into three large buckets as we see it.

14 Well, let's start all the way on the right. The
15 largest bucket of equipment is the -- is currently in Priority
16 Power's possession and was never delivered or shipped to Core.
17 And that's about \$17 million.

18 **THE COURT:** And why is that important?

19 **MS CALABRESE:** It's important because we would say
20 that Priority Power's lien is controlling. And that title
21 never shifted to the Debtors, which would have an impact on
22 Core's other -- the Debtor's other constituents and their
23 interest in that -- those assets.

24 **THE COURT:** So it's not your -- it's not yours.

25 **MS CALABRESE:** It's theirs.

1 **THE COURT:** Got it. Okay.

2 **MS CALABRESE:** Priority Power's.

3 And that's a -- that's the bulk of this, your Honor.

4 So that's 17 million, never transfer to Core. So Priority Power
5 is retaining that equipment.

6 **THE COURT:** Free of any claims by the Debtor.

7 **MS CALABRESE:** Yes.

8 **THE COURT:** I got it. Okay.

9 **MS CALABRESE:** Then the next bucket I'd like to talk
10 about is the equipment that was delivered to Core, but never
11 installed. That's 5.8 million worth of equipment.

12 And Core has that equipment currently staged at the
13 facilities.

14 Austin, if you could go to the next slide quickly.

15 So here's -- here's one piece of equipment that's
16 been delivered and staged. It's an uninstalled and unassembled
17 substation power transformer at the Cottonwood facility. This
18 is listed on Annex A. And it will transfer back to PPM.

19 (**Pause in the proceeding.**)

20 **THE COURT:** So, you hadn't hooked up the wires.

21 You're just going to go out, put it on the truck, and take it.

22 **MS CALABRESE:** Well, I'm -- I'm not going to do that,
23 your Honor.

24 **THE COURT:** All right.

25 **MS CALABRESE:** But it -- that will happen. Yes.

1 **THE COURT:** Okay.

2 **MS CALABRESE:** It'll happen.

3 Austin, if you could flip back? Okay.

4 Then we have the equipment that was delivered and
5 installed. That's a much smaller amount. It's 340,000 or so,
6 give or take.

7 **THE COURT:** All right. And what has to happen there?

8 **MS CALABRESE:** So there I believe the -- that -- I'm
9 a little bit out of my depth here. But I believe that's a
10 fixture.

11 **THE COURT:** I know. And it's -- and it's fun. So
12 keep going.

13 (**Laughter.**)

14 **MS CALABRESE:** Yes. So we'll just go with it. We'll
15 go with it.

16 So it's a fixture. And I believe that Priority
17 Power's mechanics lien is -- is the priority lien on that
18 340,000 as well.

19 **THE COURT:** All right. So if the M and M lien
20 attaches where?

21 **MS CALABRESE:** The M and M lien attaches to the
22 equipment. And it stays with it -- I'm sorry. It -- it stays
23 with the equipment.

24 So Priority Power, now that it's a fixture, is it
25 when affixed, I believe? But it -- I've -- I remember. It

1 attaches to the land improvements and fixtures.

2 **THE COURT:** There you go. Okay.

3 And so, who's responsible? Cause this is where wires
4 have been hooked up, right?

5 **MS CALABRESE:** Wires have been hooked up to the
6 extent.

7 **THE COURT:** Have you ever seen one of these things in
8 real life?

9 **MS CALABRESE:** I have not seen one of these things --

10 **THE COURT:** Got it.

11 **MS CALABRESE:** -- in real life.

12 **THE COURT:** So you know, it's -- I grew up an
13 engineer, electrical as a matter of fact.

14 So, you know, this is -- this has got some -- this
15 has got some work involved.

16 **MS. CALABRESE:** Uh-huh.

17 **THE COURT:** And actually doing this stuff --

18 **MS CALABRESE:** Yes.

19 **THE COURT:** Who's -- who's responsible for
20 disconnecting it?

21 **MS CALABRESE:** I believe Priority Power is to pick up
22 the equipment that's being transferred back to them.

23 **THE COURT:** All right. So they're responsible for
24 safely disconnecting the equipment and removing it.

25 **MS CALABRESE:** I can't say, your Honor, that I

1 remember speaking about that specific term. But I'm sure that
2 the Debtors and Priority Power could reach some mutually-
3 acceptable.

4 **THE COURT:** Of course. But, you know, you're going
5 to do these for the next 40 years, right?

6 **MS CALABRESE:** Yes.

7 **THE COURT:** So as you're looking at them, you want to
8 make sure you understand how that's going to be accomplished.
9 Cause that's not free.

10 **MS CALABRESE:** Uh-huh.

11 **THE COURT:** And you also want to make sure as a
12 fiduciary that you have appropriate oversight. And that may
13 mean that somebody's just standing out there watching.

14 **MS CALABRESE:** Uh-huh.

15 **THE COURT:** It may mean that you have to have an
16 expert. But you always want to make sure as you're working
17 through this. Cause you want to be able to get this done and
18 move on. You don't want to have to look back over your
19 shoulder.

20 Make sense?

21 **MS CALABRESE:** Yes.

22 **THE COURT:** Okay.

23 **MS CALABRESE:** Absolutely?

24 **THE COURT:** All right.

25 (**Pause in the proceeding.**)

1 **THE COURT:** Keep going.

2 **MS. CALABRESE:** So those are the three big categories
3 that the equipment divides into.

4 Austin, if we can go to the next slide, please.

5 This is the substation.

6 Austin, next slide, please?

7 **THE COURT:** Which very cool picture by the way.

8 **(Pause in the proceeding.)**

9 **MS CALABRESE:** Your Honor, I see the -- I see the
10 slide on -- on Mr. Crabtree's computer, but it's not -- there
11 we go.

12 **(Pause in the proceeding.)**

13 **MS CALABRESE:** So against that backdrop, you know,
14 from the Debtor's perspective approve of the PPM settlement is
15 warranted. This is a good deal for the Debtor's estate.
16 Litigating the Debtor's potential claims, you know, success is
17 uncertain. It will be expensive. It will be costly. The
18 Priority Power settlement is a product of good faith, arms'
19 length negotiation. We've been heavily negotiating this
20 agreement since middle of February, but have been in talks, you
21 know, since a little -- dating a little earlier than that.

22 And it's also, you know, reasonable and in the
23 Debtor's best interest. This will satisfy Priority Power's
24 claim and the PPM liens with surplus equipment. I did not
25 mention that. This is surplus equipment that the Debtors

1 cannot utilize because they're not going to continue building
2 out those facilities.

3 **THE COURT:** Right.

4 **MS CALABRESE:** So it's just excess.

5 The Debtors will also have the flexibility to
6 negotiate. That electricity supply agreement I mentioned with
7 the REP, which will provide valuable optionality to the
8 Debtors.

9 My understanding is that the Debtors believe they
10 might be able to negotiate a better agreement. But if they
11 can't, Priority Power is still there to negotiate an agreement.

12 So the Debtors and the choice of the Debtors whether
13 it does its own or it goes with Priority Power. And then it
14 will -- this is important as well. It will stabilize the
15 relationship between the Debtors and Priority Power moving
16 forward.

17 Priority Power is important to the Debtors. This is
18 a key relationship for them in the context of the Cedarville
19 and Cottonwood sites. And the settlement agreement will
20 provide some much needed priority going forward.

21 **THE COURT:** All right. Makes sense to me. What
22 else?

23 **MS CALABRESE:** Thank you, your Honor.

24 That's -- that's all I have on the motion. Unless -- I'm happy
25 to address any additional questions from your Honor.

1 **THE COURT:** And so, what -- what do you want me to
2 do.

3 **MS CALABRESE:** Oh, yeah.

4 So we would like you to please approve the 9019
5 motion. Allow the Debtors to assume the power procurement
6 agreement, and also enter into the new agreement that I
7 mentioned, the curtailment agreement and the asset management
8 agreement.

9 **THE COURT:** Got it. And the latest form of order is
10 what?

11 **MS CALABRESE:** It's docketed at 702.

12 **THE COURT:** There are a bunch of things docketed at
13 702, right?

14 **MS CALABRESE:** There are.

15 The latest form of order is the proposed order
16 docketed at 702, along with additional redlines that reflect
17 changes.

18 **THE COURT:** Okay. So 702-1?

19 **MS CALABRESE:** Seven oh two dash one.

20 **THE COURT:** Okay.

21 **MS CALABRESE:** Yes.

22 **THE COURT:** Got it. Thank you. Nice job.

23 **MS CALABRESE:** Appreciate it, your Honor.

24 **THE COURT:** All right. Mr. Hansen, any comment that
25 you want to make on behalf of your clients?

1 I think I understand the business decision that got
2 made. And I think you got -- I think you got the right
3 balance. But obviously, I didn't want to take away your
4 ability to -- to make any statements you thought were
5 appropriate.

6 **(Pause in the proceeding.)**

7 **THE COURT:** Oh, Mr. Hansen, I'm sorry. We can't hear
8 you. Can you hit five, star for me?

9 **(Pause in the proceeding.)**

10 **THE COURT:** There we go.

11 **MR. HANSEN:** Can you hear me okay, your Honor?

12 **THE COURT:** Yes, sir. Loud and clear. Thank you.

13 **MR. HANSEN:** All right. Great.

14 Yes, your Honor, I -- I did want to make a couple of
15 remarks on behalf of the Ad Hoc Committee of Secured
16 Convertible Noteholders.

17 The first of which we're obviously withdrawing our
18 objection in connection with the consent that we're rendering
19 with the entry of the order. But I did want to give just a
20 little bit of history to how we arrived at having to file our
21 objection of reservation of rights last night. Cause I think
22 it's helpful for the Court not only on this issue, but context
23 as we move forward as they are. There may be others that come
24 up.

25 So, your Honor, we obviously -- we appreciate that

1 the Debtors came to us early and identified these issues for
2 us, talked to us about the context of the settlement. Of
3 course, with a lien through UCC law and what the Debtors
4 stipulated to on the Debtor's equipment, which includes the
5 fixtures, we were a bit concerned that they were not going to
6 be able to satisfy §363 because there -- there are not cash
7 proceeds from the settlement.

8 So from a, you know, from an (f)(3) perspective, it
9 didn't look like anything was coming in that obviously would
10 have exceeded the value (indiscernible) of the equipment.

11 So it was really a question of consent at that point.
12 And there are other liens on the equipment as well that may be
13 junior in nature, given the depth and others, but they're out
14 there. And so we had that concern. And you had discussed the
15 previous situation where it is a -- a settlement but it's also
16 a transfer of collateral free and clear of the interest, or the
17 lien interest, in that collateral for no active consideration,
18 right?

19 There is consideration in the form of relief of a
20 claim, which doesn't necessarily benefit our parties, because
21 we believe that we have a senior lien. But we nevertheless
22 understood that it was important for the Debtors to try to move
23 through. And we wanted to be constructive here.

24 So the suggestion that we made was to incorporate it
25 into the order was that we receive effectively an equivalent

1 lien in value on something that we don't currently a lien in,
2 so effectively a trade if you will.

3 And the Debtors were amendable to that. And the
4 reason we had to file the objection to their order last night
5 is because we were working through it with the Debtors and all
6 the other parties. And people had not agreed on the punt
7 concept that's contained in the order.

8 I think we and the Debtors obviously. It took a
9 little bit of time for others to get there. And that punt
10 concept is, instead of trying to litigate today what the value
11 of this equipment is and the Debtors' interest in it as
12 (indiscernible) on the lien.

13 Let's push that off a little bit. Because it may or
14 may not be important in the context of what's to come from a
15 plan negotiation, which is where we all need to get to. We
16 were prepared, obviously, to come before the Court and make all
17 kinds of arguments about whose interests were in what and what
18 the value might be. But it didn't make sense to do that today.

19 So that was the idea behind the punt. And I'm glad
20 that other parties agreed on that this morning before the
21 Debtors and noteholders thought that that was the right
22 approach.

23 It is important to look at those three buckets of
24 assets, though. Because and -- and I did want to just point
25 out that while you have the Q and A with Debtor's counsel,

1 the -- the whole point is we have the equipment at PPM's
2 facility.

3 I didn't think that there should be -- there's
4 obviously no finding in the record yet. It was more just
5 colloquy between you and counsel. But -- but the point that
6 the equipment being at PPM's facility means that it is not the
7 Debtor's equipment.

8 We've -- none of this established that for us. We've
9 ask for whether or not the Debtors have actually paid -- paid
10 for that equipment, whether there was a purchase order which
11 demonstrates ones title to that property would transfer. Who
12 knows the result of a title opinion. And just because it's at
13 their facility, it doesn't mean that they -- it belongs to
14 them.

15 So that's an issue. But if we have to get to it in
16 the future, we'll get to it. The other two, would it be in the
17 Debtor's property a little bit easier, you know, to deal with.

18 But that's pretty important. And obviously to assist
19 us in -- in dealing with the issue going forward, the Debtors
20 are still trying to determine whether or not they have paid for
21 that equipment and where those purchase orders are. So we need
22 to determine title transfer.

23 And then lastly, your Honor, I just wanted to say for
24 the record that it's really important to the Ad Hoc Group of
25 Secured Convertible Noteholders that nothing in connection with

1 the order entered today sets any precedent for any future
2 transaction, whether or not the settlement was other mechanic
3 lien holders, other secured parties, et cetera.

4 Our view is the (phonetic) situation. We are happy
5 to support it. But we don't want to have any kind of
6 methodology in here fighting anybody for in terms of whose
7 property belongs to who and what the value of those liens are,
8 what the value of other property may be, et cetera.

9 And we'll cross that bridge when we get to it. On
10 this one, and what we hope, is that we have a business plan
11 from the Debtors here and a plan negotiation to try to bring
12 some consent to the Court.

13 But again, we're reserving all of our rights,
14 obviously, on future settlements.

15 **THE COURT:** Got it. Thank you.

16 Anyone else have any comments?

17 **(Pause in the proceeding.)**

18 **THE COURT:** Yes, sir.

19 **MR. BOWLING:** Good afternoon, your Honor. Scott
20 Bowling with Baker Botts on behalf of Priority Power. With me
21 in the courtroom today is my partner, Danny David, together
22 with --

23 **THE COURT:** Good afternoon, both of you.

24 **MR. BOWLING:** -- two members of Priority's senior
25 management team, Mr. John Bick (phonetic), the Chairman and

1 Chief Commercial Officer.

2 **THE COURT:** Afternoon.

3 **MR. BOWLING:** As well as Mr. Brooks-Antweil
4 (phonetic), the Chief Legal Officer.

5 **THE COURT:** Got it. Good afternoon to you.

6 **MR. BOWLING:** Your Honor, we obviously support the
7 settlement. We'd only like to thank the Court for your time
8 today. We thank the Debtors, the Weil team, and the other
9 parties for their constructive work towards the settlement.

10 **THE COURT:** All right. Thank you.

11 So first, Mr. Hansen, let me -- let me go back and
12 deal with the issues that you've raised. Number one, I very
13 much appreciate the business approach that -- that your client
14 took. I -- I think that the right balance has been struck.

15 You are right. I was really just having a little fun
16 with counsel. I -- I agree that title is going to -- can be
17 driven by many things, including contracts, including the
18 documentary evidence. And again, not trying to get too far in
19 that, but I do think that it is an evidentiary issue that will
20 have to be flushed out if as and when necessary.

21 So again, just having some fun with the young lawyer
22 just to see what she read, and see what she hadn't read. So
23 did not intend for that to in any way be binding on -- on your
24 clients.

25 Likewise, again, every situation exists on its own

1 merits. And this is not indicative of a -- a -- a path forward
2 for any particular transaction other than the one that is
3 before me. And so hopefully, that will give your client some
4 comfort that they can make business decisions and -- and not
5 inadvertently stub their toe along the way with respect of the
6 next one.

7 With respect to the motion that I have before me, I
8 do find that I have jurisdiction over the matter, pursuant to
9 28 U.S.C. §1334. Do find that the approval of a compromise
10 constitutes a core proceeding under 28 U.S.C. §157. Further
11 find that I have the requisite Constitutional authority to
12 enter a final order.

13 I am comfortable, based upon the uncontested record
14 that the Debtor has prudently exercised its business judgment.
15 And again in those cases, which we all know and recite all the
16 time, that the Fifth Circuit has said I'm not to substitute my
17 own judgment for that of the Debtor. I'm simply to look at the
18 range of business judgment and see that it falls within the
19 reasonable range.

20 This is prudent business judgment. It's at the top.
21 I, again, I think it's just the right balance. I understand
22 the economics from the Debtor's point of view, from PPM's point
23 of view. I -- I got the transaction that has been proposed.
24 It just makes good sense to me.

25 To the extent that the compromise includes a transfer

1 of property, not something that doesn't happen on a regular
2 basis. Again, all of the issues that might have been issues
3 have been resolved with the consent by the noteholders. Don't
4 have any concerns whatsoever.

5 I will grant the motion used in the order at 702-1.
6 We will get that on the docket promptly. So it'll show up this
7 afternoon.

8 Anything else we need to address?

9 **MR. PEREZ:** Nothing further, your Honor. May we be
10 excused.

11 **THE COURT:** Absolutely.

12 **MR. PEREZ:** Thank you.

13 **THE COURT:** Thank you all. Be well.

14 And folks who are on for the 1:15 --

15 **MR. HANSEN:** Thank you, your Honor.

16 **THE COURT:** -- give me just a moment.

17 **(This proceeding was adjourned at 01:43 p.m.)**

18 CERTIFICATION

19 I certify that the foregoing is a correct transcript from the
20 electronic sound recording of the proceedings in the above-
21 entitled matter.

22 /s/Cheryl L. Battaglia

March 23, 2023

23 Transcriber

Date

24 22-BK-90341

25 03/20/22 - 03/23/23